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 8 JULIAN ARCHULETA
 9 and DISABILITY RIGHTS
 10 ENFORCEMENT, EDUCATION,
 11 SERVICES: HELPING YOU
 12 HELP OTHERS

13 UNITED STATES DISTRICT COURT
 14 NORTHERN DISTRICT OF CALIFORNIA

15 JULIAN ARCHULETA, an individual; and)
 16 DISABILITY RIGHTS ENFORCEMENT,)
 17 EDUCATION, SERVICES:HELPING)
 18 YOU HELP OTHERS, a California public)
 19 benefit corporation,)

20 Plaintiffs,)

21 v.)

22 JACK'S CLUB; DOLORES L.)
 23 PERRAPATO, an individual dba JACK'S)
 24 CLUB; and IRMA ENCINAS, an)
 25 individual dba JACK'S CLUB,)

26 Defendants.)
 27 _____)
 28 -)

CASE NO. C04-5318 EMC
Civil Rights

**COMPLAINT FOR INJUNCTIVE RELIEF
 AND DAMAGES:**

1st CAUSE OF ACTION: For Denial of
 Access by a Public Accommodation in
 Violation of the Americans with Disabilities
 Act of 1990 (42 U.S.C. §12101, *et seq.*)

2nd CAUSE OF ACTION: For Denial of Full
 and Equal Access in Violation of California
 Civil Code §§54, 54.1 and 54.3

3rd CAUSE OF ACTION: For Denial of
 Access to Full and Equal Accommodations,
 Advantages, Facilities, Privileges and/or
 Services in Violation of California Civil Code
 §51, *et seq.* (The Unruh Civil Rights Act)

4th CAUSE OF ACTION: For Unfair Business
 Practices in Violation of California Business
 and Professions Code §17200, *et seq.*

DEMAND FOR JURY

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1 Plaintiffs JULIAN ARCHULETA, an individual; and DISABILITY RIGHTS
2 ENFORCEMENT, EDUCATION, SERVICES: HELPING YOU HELP OTHERS, a
3 California public benefit corporation (hereinafter sometimes referred to as "DREES"),
4 complain of defendants DOLORES L. PERRAPATO, an individual dba JACK'S CLUB;
5 and IRMA ENCINAS, an individual dba JACK'S CLUB, and allege as follows:

6 **INTRODUCTION:**

7 1. This is a civil rights action for discrimination against persons
8 with physical disabilities, of which class plaintiff JULIAN ARCHULETA and the
9 membership of DREES are members, for failure to eliminate discriminatory
10 policies and procedures in nature at defendants' JACK'S CLUB, a place of
11 public accommodation, thereby discriminatorily denying plaintiffs and the
12 class of other similarly situated persons with physical disabilities access to,
13 the full and equal enjoyment of, opportunity to participate in, and benefit
14 from, the goods, facilities, services, and accommodations thereof. Plaintiffs
15 seek injunctive relief and damages pursuant to the Americans with
16 Disabilities Act of 1990, 42 U.S.C. §12101, *et seq.*; California Civil Code
17 §§51, 51.5 and 54, *et seq.*; California Health & Safety Code §19955, *et seq.* and
18 California Business and Professions Code §17200, *et seq.*

19 2. Plaintiff JULIAN ARCHULETA is a person with physical disabilities
20 who, on or about December 21, 2003 and March 30, 2004, was an invitee,
21 guest, patron, customer at defendants' JACK'S CLUB in the City of San
22 Francisco, California. At said time and place, defendants failed to provide
23 proper legal access to JACK'S CLUB, which is a "public accommodation"
24 and/or a "public facility". The denial of access was in violation of both
25 federal and California legal requirements, and plaintiff JULIAN ARCHULETA
26 suffered violation of his civil rights to full and equal access, and was
27 embarrassed and humiliated.

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5 **JURISDICTION AND VENUE:**

6 3. **Jurisdiction:** This Court has jurisdiction of this action pursuant to
7 28 U.S.C. §1331 for violations of the Americans with Disabilities Act of
8 1990, 42 U.S.C. §12101, *et seq.* Pursuant to pendant jurisdiction, attendant
9 and related causes of action, arising from the same nucleus of operative facts
10 and arising out of the same transactions, are also brought under parallel
11 California law, whose goals are closely tied with the ADA, including but not
12 limited to violations of California Civil Code §51, *et seq.* and §54, *et seq.*

13 4. **Venue:** Venue is proper in this court pursuant to 28 U.S.C.
14 §1391(b) and is founded on the facts that the real property which is the
15 subject of this action is located in this district at/near 2545 24th Street, in the
16 City of San Francisco, County of San Francisco, State of California, and that
17 plaintiffs' causes of action arose in this district.

18 **PARTIES:**

19 5. Plaintiff JULIAN ARCHULETA is a "physically handicapped
20 person", a "physically disabled person", and a "person with physical
21 disabilities" (hereinafter the terms "physically disabled", "physically
22 handicapped" and "person with physical disabilities" are used
23 interchangeably, as these words have similar or identical common usage and
24 legal meaning, but the legislative scheme in Part 5.5 of the Health & Safety
25 Code uses the term "physically handicapped persons" and the Unruh Civil
26 Rights Act, §§51, 51.5, 54, 54.1 and 55, and other statutory measures refer to
27 protection of the rights of "physically disabled persons"). Plaintiff JULIAN
28 ARCHULETA is a "person with physical disabilities", as defined by all

1 applicable California and United States laws. Plaintiff suffered a close head
2 injury which has resulted in significant neuro-musculature limitations. The
3 extent of such limitations includes but is not limited to use of upper and lower
4 extremities to the degree that he needs a wheelchair for mobility. A further
5 limitation is plaintiff JULIAN ARCHULETA's inability to speak. Plaintiff
6 JULIAN ARCHULETA communicates by the written word and use of a
7 lightwriter. He has no trouble eating or drinking. Plaintiff JULIAN
8 ARCHULETA is able to express his needs and desires and to act on his own
9 best interest. Plaintiff JULIAN ARCHULETA requires the use of a wheelchair to
10 travel about in public and a lightwriter to communicate. Consequently,
11 plaintiff JULIAN ARCHULETA is a member of that portion of the public whose
12 rights are protected by the provisions of Health & Safety Code §19955, *et seq.*
13 (entitled "Access to Public Accommodations by Physically Handicapped
14 Persons") and the protections of the Unruh Civil Rights Act, Civil Code §§51,
15 51.5 and 54, *et seq.* and California Business and Professions Code §17200, *et*
16 *seq.*

17 6. Plaintiff DISABILITY RIGHTS ENFORCEMENT,
18 EDUCATION, SERVICES: HELPING YOU HELP OTHERS ("DREES") is
19 a nonprofit (501(c)(3)) organization that works with persons with disabilities
20 to empower them to be independent in American society. DREES
21 accomplishes its goals and purposes through education on disability issues,
22 enforcement of the rights of persons with disabilities, and the provision of
23 services to persons with disabilities, the general public, public agencies and
24 the private business sector.

25 7. Defendants DOLORES L. PERRAPATO, an individual dba JACK'S CLUB;
26 and IRMA ENCINAS, an individual dba JACK'S CLUB (hereinafter alternatively
27 collectively referred to as "defendants") are the owners and operators, lessors
28 and/or lessees, or agents of the owners, lessors and/or lessees, and/or alter

1 egos, franchisors and/or franchisees, of the building and/or buildings which
2 constitute a public facility in and of itself, occupied by JACK'S CLUB, a public
3 accommodation located at/near 2545 24th Street, San Francisco, California,
4 and subject to the requirements of California state law requiring full and
5 equal access to public facilities pursuant to §19955 of the Health & Safety
6 Code, and §§51, 51.5, 52(a), 54.1 and 54.3 of the Civil Code, and subject to
7 Title III of the Americans with Disabilities Act of 1990, and to all other legal
8 requirements referred to in this complaint.

9 8. At all times relevant to this complaint, defendants DOLORES L.
10 PERRAPATO, an individual dba JACK'S CLUB; and IRMA ENCINAS, an individual dba
11 JACK'S CLUB, are the lessees, or agents of the lessees, and/or lessors, of said
12 premises, and/or alter egos of the lessees, lessors and their agents, and own
13 and operate in joint enterprise the subject JACK'S CLUB as a public facility
14 at/near 2545 24th Street, San Francisco, California. This business is open to
15 the general public and conducts business therein. The business operating on
16 said premises is a "public accommodation" or "public facility" subject to the
17 requirements of California Civil Code §54, *et seq.* Plaintiffs do not know the
18 relative responsibilities of each of the defendants in the operation of the
19 facilities herein complained of, and allege a joint venture and common
20 enterprise by all such defendants.

21 9. At all times relevant to this complaint, defendants DOLORES L.
22 PERRAPATO, an individual dba JACK'S CLUB; and IRMA ENCINAS, an individual dba
23 JACK'S CLUB are the landlords/lessors, tenants/lessees and the owners and
24 operators of the subject JACK'S CLUB, a public facility located at/near 2545
25 24th Street, San Francisco, California. As such, these defendants are jointly
26 and severally responsible to eliminate discriminatory practices, policies and
27 procedures pursuant to Code of Federal Regulations title 28, section
28 36.201(b), which states in pertinent part:

1 **§ 36.201 General**

2 (b) *Landlord and tenant responsibilities.* Both the landlord
3 who owns the building that houses a place of public
4 accommodation and the tenant who owns or operates the place of
5 public accommodation are public accommodations subject to the
6 requirements of this part. As between the parties, allocation of
7 responsibility for complying with the obligations of this part may
8 be determined by lease or other contract.

9 28 CFR §36.201(b)

10 10. Plaintiffs do not know the true names of defendants DOLORES L.
11 PERRAPATO, an individual dba JACK'S CLUB; and IRMA ENCINAS, an individual dba
12 JACK'S CLUB, their business capacities, their ownership connection to the
13 property and business, nor their relative responsibilities in causing the access
14 violations herein complained of, and allege a joint venture and common
15 enterprise by all such defendants. Plaintiffs are informed and believe that
16 each of the defendants herein is a public accommodation, and is the agent,
17 ostensible agent, master, servant, employer, employee, representative,
18 franchisor, franchisee, joint venturer, alter ego, partner, and associate, or such
19 similar capacity, of each of the other defendants, and was at all times acting
20 and performing, or failing to act or perform, within the course and scope of
21 his, her or its authority as agent, ostensible agent, master, servant, employer,
22 employee, representative, franchiser, franchisee, joint venturer, alter ego,
23 partner, and associate, or such similar capacity, and with the authorization,
24 consent, permission or ratification of each of the other defendants, and is
25 responsible in some manner for the acts and omissions of the other
26 defendants in legally causing the violations and damages complained of
27 herein, and have approved or ratified each of the acts or omissions of each
28 other defendant, as herein described. Plaintiffs will seek leave to amend
 when the true names, capacities, connections, and responsibilities of
 defendants DOLORES L. PERRAPATO, an individual dba JACK'S CLUB; and IRMA
 ENCINAS, an individual dba JACK'S CLUB, are ascertained.

1 11. Plaintiffs are informed and believe that all named defendants
2 conspired to commit the acts described herein, or alternatively, aided and
3 abetted one another in the performance of the wrongful acts hereinafter
4 alleged.

5 **PRELIMINARY FACTUAL ALLEGATIONS:**

6 12. Defendants DOLORES L. PERRAPATO, an individual dba JACK'S CLUB;
7 and IRMA ENCINAS, an individual dba JACK'S CLUB, are the private persons and/or
8 entities that are public accommodations that own, lease (or lease to), or operate JACK'S
9 CLUB, located at/near 2545 24th Street, San Francisco, California. JACK'S CLUB,
10 its bar, dining area, restrooms and its other facilities are each a "place of public
11 accommodation or facility" subject to the requirements of the Americans with Disabilities Act
12 and California Health & Safety Code §19955, *et seq.*

13 13. Plaintiff JULIAN ARCHULETA is a person with a disability.
14 Plaintiff JULIAN ARCHULETA is a "person with physical disabilities", as
15 defined by all applicable California and United States laws. Plaintiff JULIAN
16 ARCHULETA suffered a close head injury which has resulted in significant
17 neuro-musculature limitations. The extent of such limitations includes but is
18 not limited to use of upper and lower extremities to the degree that he needs a
19 wheelchair for mobility. A further limitation is plaintiff JULIAN
20 ARCHULETA's inability to speak. Plaintiff JULIAN ARCHULETA
21 communicates by the written word and use of a lightwriter. He has no trouble
22 eating or drinking. Plaintiff JULIAN ARCHULETA is able to express his
23 needs and desires and to act on his own best interest. Plaintiff JULIAN
24 ARCHULETA requires the use of a wheelchair to travel about in public and a
25 lightwriter to communicate.

26 14. Plaintiff DISABILITY RIGHTS ENFORCEMENT,
27 EDUCATION, SERVICES: HELPING YOU HELP OTHERS ("DREES") is
28 a nonprofit (501)(c)(3) organization, the purposes of which are promoting,

1 providing and advocating disability rights, education, independent living,
2 enforcement and services which help provide assistance to persons with
3 disabilities and persons and entities who in turn will help others who have
4 disabilities.

5 15. That members of DREES, like plaintiff JULIAN ARCHULETA, will
6 or have been guests and invitees at the subject JACK'S CLUB, and that the
7 interests of plaintiff DREES in eliminating discriminatory policies,
8 procedures and practices which act as barriers at the subject JACK'S CLUB
9 advance the purposes of DREES to assure that all public accommodations,
10 including the subject club, are accessible to independent use by mobility-
11 impaired persons. The relief sought by plaintiff DREES as alleged herein is
12 purely statutory in nature.

13 16. At all times stated herein, plaintiff JULIAN ARCHULETA was a
14 member of DREES.

15 17. At all times referred to herein and prior to December 21, 2003
16 and continuing to the present time, defendants, and each of them, advertised,
17 publicized and held out JACK'S CLUB as being handicapped accessible and
18 handicapped usable.

19 18. On multiple occasions before December 21, 2003, plaintiff
20 JULIAN ARCHULETA and his coach and therapist Maria Olguin had been
21 invitees and guests at JACK'S CLUB.

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27 19. On or about December 21, 2003 and March 30, 2004, plaintiff JULIAN
28 ARCHULETA and Maria Olguin once again entered JACK'S CLUB for plaintiff JULIAN

1 ARCHULETA's pina colada. This time was different. Upon entering, a woman holding
2 herself out to be the owner told plaintiff JULIAN ARCHULETA and Maria Olguin that Mr.
3 Archuleta must leave because she, the owner, deemed him a liability. To wit: she said, in
4 substance, "He could be hit by a car; he could hit and hurt someone by use of his wheelchair;
5 he could be adversely affected if he combined alcohol and his medication".

6 20. At said time and place, Ms. Olguin replied that Mr. ARCHULETA frequented
7 the bar with her and that Mr. ARCHULETA was not under medication.

8 21. At said time and place, defendant owner demanded medical documentation and
9 then stated, in substance, loud enough for everyone to hear in the bar: "I am not serving these
10 people and this woman is not a medical physician and I do not want these types of people in
11 my bar".

12 22. At said time and place, plaintiff JULIAN ARCHULETA and Ms.
13 Olguin, both humiliated and embarrassed, left JACK'S CLUB.

14 23. Thereafter, plaintiff JULIAN ARCHULETA and Ms. Olguin contacted Edward
15 Ilumin, Fair Housing/Public Accommodations Compliance Officer for the Human Rights
16 Commission of the City and County of San Francisco, about the incident.

17 24. On or about March 18, 2004, Mr. Ilumin filed a letter complaint
18 to defendant owners and operators of "JACK'S" relative to the incident.

19 25. After having no response by March 30, 2004, but with a response due by April
20 5, 2004, Mr. Ilumin decided to conduct his own investigation.

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1 26. As per Mr. Ilumin's arrangements with plaintiff JULIAN
2 ARCHULETA and Maria Olguin, Mr. Ilumin would be at JACK'S BAR on
3 Utah and 24th Street Tuesday March 30, 2004 at 3:45 p.m. They would arrive
4 at 4 pm sharp. Mr. Ilumin arrived at 3:50 pm (by the clock near the entry).
5 There were three other people at the bar - two males (one elderly, the other
6 middle aged) and a female about middle aged with blonde hair and wearing
7 glasses. Mr. Ilumin took a seat at the bar and ordered, and was served a
8 Corona beer. The female at the bar left and went to a back room.

9 27. At said time and place, a few minutes after 4pm, plaintiff JULIAN
10 ARCHULETA and Maria Olguin arrived. The doors are double doors and Ms. Olguin had
11 difficulty opening the door so that JULIAN ARCHULETA could get his wheelchair through.
12 A patron of the bar came and assisted them through. Mr. Ilumin watched as plaintiff JULIAN
13 ARCHULETA and Ms. Olguin approached the bar and she ordered a pina colada for plaintiff
14 JULIAN ARCHULETA. The bartender, an elderly man, said he was under instructions not to
15 serve plaintiff JULIAN ARCHULETA. Ms. Olguin began to protest that this was illegal and
16 violated plaintiff JULIAN ARCHULETA's rights under the Americans with Disabilities Act.
17 At this time, the middle aged blonde haired woman with glasses reappeared from the back
18 room and, hearing the discussion between Ms. Olguin and the bartender, intervened. She said
19 "I told you before I am not serving this man". Ms. Olguin stated "This is the second time that
20 you are refusing to serve Julian because he's in a wheelchair. You are violating his rights".
21 The blonde haired woman responded "I don't care what kind of rights he has, he's not going to
22 be served. I want you two out of here now".

23 28. At said time and place, Mr. Ilumin intervened and identified
24 himself, presenting his business card. He mentioned to the woman that there
25 wasn't any reason not to serve the man, to which she responded "He is in a
26 wheelchair and I'm not going to be made liable if I serve him and he injures
27 himself - if not in my bar, then outside it". Mr. Ilumin asked her if there were
28 any other reasons why she would not serve him. She said "I think they're

1 setting me up. This guy's in a wheelchair. I don't know what kind of
2 medication he's on and I'm not going to be made liable if I serve him". She
3 also said "You (meaning Mr. Ilumin) should be ashamed of yourself, being
4 an educated man, you should know better". She continued on, "Look at him,
5 he can't even speak for himself. He (meaning plaintiff JULIAN
6 ARCHULETA) needs her (pointing to Ms. Olguin) to do everything for him.
7 You (meaning Mr. Ilumin) being an educated man, ought to be ashamed of
8 yourself". Mr. Ilumin advised her that all he was doing was enforcing the
9 city law and recited Art. 33, Sec. 3304 to her.

10 29. At said time and place, the middle aged blonde woman then threatened to call
11 the police if they all did not leave. Mr. Ilumin said that she should call the police and to do it
12 immediately. However, she made no effort to call the police. Mr. Ilumin told her that he
13 could not force her to serve plaintiff JULIAN ARCHULETA and that they would leave.
14 Before leaving, Mr. Ilumin asked for her name but she refused. Mr. Ilumin told her that he had
15 mailed her a Complaint notification dated March 22, 2004 to her bar, but it had been returned
16 undeliverable. So Mr. Ilumin handed her the complaint notification in person. He informed
17 her that he expected a timely response to the notice. She said Mr. Ilumin would hear from her
18 lawyer. Mr. Ilumin thanked her and the three of them left. It was 4:20 pm when they all left.

19 30. Therefore, at said times and place, plaintiff JULIAN ARCHULETA, a person
20 with a disability, encountered discriminatory policies, procedures and practices which denied
21 plaintiff JULIAN ARCHULETA access to JACK'S CLUB and which constituted barriers and
22 a denial of the proper and legally-required access to a public accommodation to persons with
23 physical disabilities.

24 31. At all times stated herein, the existence of said discriminatory policies,
25 procedures and practices at defendants' place of public accommodation evidenced "actual
26 notice" of defendants' intent not to comply with the Americans with Disabilities Act of 1990
27 either then, now or in the future.

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4 32. At all times stated herein, defendants, and each of them, were “negligent per se”
5 in not changing their discriminatory policies, procedures and practices determined by the
6 Department of Justice to be a denial of access. Therefore as a legal result of defendants breach
7 of duty to change said discriminatory policies, procedures and practices encountered by
8 plaintiff, plaintiff suffered bodily injury and emotional distress.

9 33. As a legal result of defendants DOLORES L. PERRAPATO, an individual dba
10 JACK’S CLUB; and IRMA ENCINAS, an individual dba JACK’S CLUB’s failure to act as a
11 reasonable and prudent public accommodation in changing and removing policies, practices
12 and procedures that denied access to plaintiffs and other persons with disabilities, plaintiffs
13 suffered the damages as alleged herein.

14 34. As a further legal result of the actions and failure to act of defendants, and as a
15 legal result of the failure to provide access to public facilities as set forth herein, plaintiffs
16 were denied their civil rights to full and equal access to public facilities. Plaintiff JULIAN
17 ARCHULETA suffered a loss of his civil rights and his rights as a person with physical
18 disabilities to full and equal access to public facilities, and further suffered bodily injury
19 (including, but not limited to, fatigue, stress, strain and pain in coping with being thrown out of
20 the bar), physical discomfort, emotional distress, mental distress, mental suffering, mental
21 anguish, which includes, but is not limited to, shame, humiliation, embarrassment, anger,
22 chagrin, disappointment and worry, expectedly and naturally associated with a person with
23 physical disabilities being denied access, all to his damages as prayed hereinafter in an amount
24 within the jurisdiction of this court.

25 35. Defendants’, and each of their, failure to eliminate discriminatory policies,
26 practices and procedures complained of herein created, at the time of plaintiff JULIAN
27 ARCHULETA’s first visit to said public accommodation on December 21, 2003, and
28 continues to create continuous and repeated exposure to substantially the same general harmful

1 conditions which caused plaintiff JULIAN ARCHULETA fatigue, stress, strain, pain and
2 emotional distress from being thrown out of the bar.

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4 36. Plaintiff JULIAN ARCHULETA is “physically handicapped”, “physically
5 disabled” or a “person with physical disabilities” who was denied his rights to equal access to
6 a public facility by defendants DOLORES L. PERRAPATO, an individual dba JACK’S
7 CLUB; and IRMA ENCINAS, an individual dba JACK’S CLUB, because defendants
8 DOLORES L. PERRAPATO, an individual dba JACK’S CLUB; and IRMA ENCINAS, an
9 individual dba JACK’S CLUB, maintained discriminatory policies, procedures and practices,
10 and continue to the date of filing this complaint to deny equal access to plaintiffs and other
11 persons with physical disabilities in these and other ways.

12 37. Plaintiff DREES, whose members and the disability community that DREES
13 serves are “physically handicapped”, “physically disabled”, or “persons with physical
14 disabilities” and were, are and will be denied their rights to equal access to a public facility by
15 defendants DOLORES L. PERRAPATO, an individual dba JACK’S CLUB; and IRMA
16 ENCINAS, an individual dba JACK’S CLUB because defendants DOLORES L.
17 PERRAPATO, an individual dba JACK’S CLUB; and IRMA ENCINAS, an individual dba
18 JACK’S CLUB, maintained discriminatory policies, procedures and practices, and continue to
19 the date of filing this complaint to deny equal access to plaintiff and other persons with
20 physical disabilities in these and other ways.

21 38. Plaintiffs, as described hereinbelow, seek injunctive relief to require defendants
22 DOLORES L. PERRAPATO, an individual dba JACK’S CLUB; and IRMA ENCINAS, an
23 individual dba JACK’S CLUB to adopt non discriminatory policies, practices and procedures
24 to meet the requirements of both California law and the Americans with Disabilities Act of
25 1990, so long as defendants operate JACK’S CLUB as a public facility. Plaintiffs seek
26 damages for violation of their civil rights, from December 21, 2003 until such date as
27 defendants allow disabled persons into the bar pursuant to the requirements of California and
28 federal law. To encourage defendants to change their discriminatory policies, procedures and

1 practices and to come into compliance with the law, plaintiffs also seek daily damages of not
2 less than \$4,000/day, pursuant to §§52(a) and 54.3, California Civil Code, for each day after
3 his visit until such time as the subject bar is made fully accessible to plaintiffs and to other
4 persons with physical disabilities.

5 39. On information and belief, defendants have been negligent in their affirmative
6 duty to change their existing discriminatory policies, procedures and practices complained of
7 herein.

8 40. Because of defendants' violations, plaintiffs and other persons with physical
9 disabilities are unable to use public facilities such as those owned and operated by defendants
10 on a "full and equal" basis unless such facility is in compliance with the provisions of the
11 Americans with Disabilities Act of 1990, Civil Code §54.1 and Health & Safety Code §19955,
12 *et seq.* and other accessibility law as plead herein. Plaintiffs seek an order from this court
13 compelling defendants to eliminate their discriminatory policies, procedures and practices
14 against persons with disabilities.

15 41. On information and belief, defendants have intentionally undertaken to establish
16 discriminatory policies, procedures and practices, and have failed to comply with accessibility
17 requirements under the requirements of ADAAG and state access laws. The acts and omission
18 of defendants, and each of them, in failing to allow disabled persons such as plaintiff JULIAN
19 ARCHULETA into public facilities at the time of plaintiff's visits and injuries, indicate actual
20 and implied malice toward plaintiffs, and despicable conduct carried out by defendants, and
21 each of them, with a willful and conscious disregard for the rights and safety of plaintiffs and
22 other similarly situated persons, and justify exemplary damages pursuant to §3294 of the Civil
23 Code, in amounts sufficient to make a more profound example of defendants, and each of
24 them, to other operators of other bars, lounges, restaurants and other public facilities, and to
25 punish defendants and to carry out the purposes of §3294 of the Civil Code.

26 42. On personal knowledge, information and belief, the basis of defendants'
27 actual and constructive notice that their discriminatory policies, procedures and practices were
28 in violation of the civil rights of persons with physical disabilities, such as plaintiffs, includes,

1 but is not limited to, communications with invitees and guests (such as Edward Ilumin, Fair
2 Housing/Public Accommodations Compliance Officer), sponsors of conferences, owners of
3 other restaurants, hotels, motels and businesses, notices they obtained from governmental
4 agencies such as the Human Rights Commission, newspaper articles and trade publications
5 regarding the Americans with Disabilities Act of 1990 and other access laws, public service
6 announcements by former U.S. Attorney General Janet Reno between 1993 and 2000, and
7 other similar information. Defendants' failure, under state and federal law, to eliminate their
8 discriminatory policies, procedures and practices which denied disabled persons access to
9 JACK'S CLUB is further evidence of defendants' conscious disregard for the rights of plaintiff
10 and other similarly situated persons with disabilities. The scope and means of the knowledge
11 of each defendant is within each defendant's exclusive control and cannot be ascertained
12 except through discovery. Despite being informed of such effect on plaintiff and other persons
13 with physical disabilities due to defendants' acts, defendants, and each of them, knowingly and
14 willfully refused to take any steps to rectify the situation and to provide full and equal access
15 for plaintiffs and other persons with physical disabilities to JACK'S CLUB. Said defendants,
16 and each of them, have continued such practices, in conscious disregard for the rights of
17 plaintiffs and other persons with physical disabilities, up to the date of filing of this complaint,
18 and continuing thereon. Defendants had further actual knowledge of their discriminatory acts
19 referred to herein by virtue of the demand letter addressed to the defendants and served
20 concurrently with the summons and complaint. Said conduct, with knowledge of the effect it
21 was and is having on plaintiffs and other persons with physical disabilities, constitutes
22 despicable conduct in conscious disregard of the rights and safety of plaintiffs and of other
23 similarly situated persons, justifying the imposition of punitive and exemplary damages per
24 Civil Code §3294.

25 43. Punitive Damages -- Defendants, and each of them, at times prior to and
26 including December 21, 2003, and continuing to the present time, knew that persons with
27 physical disabilities were denied their rights of equal access to all portions of this public
28 facility. Despite such knowledge, defendants, and each of them, failed and refused to take

1 steps to comply with the applicable access statutes; and despite knowledge of the resulting
2 problems and denial of civil rights thereby suffered by plaintiffs and other similarly situated
3 persons with disabilities, including the specific notices referred to in paragraphs 26, 27 and 42
4 of this complaint. Defendants, and each of them, have failed and refused to take action to
5 grant full and equal access to persons with physical disabilities in the respects complained of
6 hereinabove. Defendants, and each of them, have carried out a course of conduct of refusing
7 to respond to, or correct complaints about, denial of handicap access and have refused to
8 comply with their legal obligations to make JACK'S CLUB accessible pursuant to the
9 Americans with Disabilities Act of 1990, Americans with Disabilities Act Accessibility
10 Guidelines (ADAAG) and Title 24. Such actions and continuing course of conduct by
11 defendants, and each of them, evidence despicable conduct in conscious disregard for the
12 rights or safety of plaintiffs and of other similarly situated persons, justifying an award of
13 exemplary and punitive damages pursuant to §3294, Civil Code.

14 44. Defendants', and each of their, actions have also been oppressive to persons
15 with physical disabilities and of other members of the public, and have evidenced actual or
16 implied malicious intent toward those members of the public, such as plaintiffs and other
17 persons with physical disabilities who have been denied the proper access they are entitled to
18 by law. Furthermore, defendants', and each of their, refusals on a day-to-day basis to remove
19 the barriers complained of herein evidence despicable conduct in conscious disregard for the
20 rights of plaintiffs and other members of the public with physical disabilities.

21 45. Plaintiffs pray for an award of punitive damages against defendants, and each of
22 them, pursuant to Civil Code §3294 in an amount sufficient to make a more profound example
23 of defendants and discourage owners and operators of other bars, lounges, clubs and other
24 public facilities, from willful disregard of the rights of persons with physical disabilities.
25 Plaintiffs do not know the financial worth of defendants, or the amount of punitive damages
26 sufficient to accomplish the public purposes of §3294 of the Civil Code and seek leave to
27 amend this complaint when such facts are known.

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3 46. Plaintiff JULIAN ARCHULETA and plaintiff DREES, on behalf of its
4 membership and the disability community which it serves, consisting of persons with
5 disabilities, would, could and will return to the subject public accommodation when the
6 discriminatory policies, procedures and practices are eliminated.

7 **I. FIRST CAUSE OF ACTION FOR DENIAL OF ACCESS BY A PUBLIC**
8 **ACCOMMODATION IN VIOLATION OF THE AMERICANS WITH**
9 **DISABILITIES ACT OF 1990 (42 U.S.C. §12101, *et seq.*)**
10 (On behalf of Plaintiffs JULIAN ARCHULETA and DISABILITY RIGHTS
11 ENFORCEMENT, EDUCATION SERVICES: HELPING YOU HELP OTHERS, a
12 California public benefit corporation and Against Defendants DOLORES L.
13 PERRAPATO, an individual dba JACK'S CLUB; and IRMA ENCINAS, an individual
14 dba JACK'S CLUB, inclusive)
15 (42 U.S.C. §12101, *et seq.*)

16 47. Plaintiffs replead and incorporate by reference, as if fully set forth again herein,
17 the allegations contained in paragraphs 1 through 46 of this complaint.

18 48. Pursuant to law, in 1990, the United States Congress made findings per
19 42 U.S.C. §12101 regarding persons with physical disabilities, finding that laws were needed
20 to more fully protect:

21 some 43 million Americans with one or more physical or mental
22 disabilities; [that] historically society has tended to isolate and
23 segregate individuals with disabilities; [that] such forms of
24 discrimination against individuals with disabilities continue to be
25 a serious and pervasive social problem; [that] the nation's proper
26 goals regarding individuals with disabilities are to assure equality
27 of opportunity, full participation, independent living and
28 economic self-sufficiency for such individuals; [and that] the
continuing existence of unfair and unnecessary discrimination
and prejudice denies people with disabilities the opportunity to
compete on an equal basis and to pursue those opportunities for
which our free society is justifiably famous.

49. Congress stated as its purpose in passing the Americans with Disabilities Act of
1990 (42 U.S.C. §12102):

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3 It is the purpose of this act (1) to provide a clear and
 4 comprehensive national mandate for the elimination of
 5 discrimination against individuals with disabilities; (2) to provide
 6 clear, strong, consistent, enforceable standards addressing
 7 discrimination against individuals with disabilities; (3) to ensure
 8 that the Federal government plays a central role in enforcing the
 standards established in this act on behalf of individuals with
 disabilities; and (4) to invoke the sweep of Congressional
 authority, including the power to enforce the 14th Amendment
 and to regulate commerce, in order to address the major areas of
 discrimination faced day to day by people with disabilities.

9 50. As part of the Americans with Disabilities Act of 1990, Public Law 101-336
 10 (hereinafter the "ADA"), Congress passed "Title III - Public Accommodations and Services
 11 Operated by Private Entities" (Section 301 42 U.S.C. §12181, *et seq.*). Among the public
 12 accommodations identified for purposes of this title was:

13 (7) PUBLIC ACCOMMODATION - The following private
 14 entities are considered public accommodations for purposes of this
 title, if the operations of such entities affect commerce -

15 . . .

16 (B) a restaurant, bar or other establishment serving food or drink;

17 42 U.S.C. §12181(7)(B)

18 51. Pursuant to §302, 42 U.S.C. §12182, "No individual shall be discriminated
 19 against on the basis of disability in the full and equal enjoyment of the goods, services,
 20 facilities, privileges, advantages, or accommodations of any place of public accommodation by
 21 any person who owns, leases, or leases to, or operates a place of public accommodation".

22 52. The specific prohibitions against discrimination set forth in §302(b)(2)(a),
 23 42 U.S.C. §12182(b)(2)(a) are:

24 (I) the imposition or application of eligibility criteria
 25 that screen out or tend to screen out an individual with a
 26 disability or any class of individuals with disabilities from fully
 27 and equally enjoying any goods, services, facilities, privileges,
 28 advantages, or accommodations, unless such criteria can be
 shown to be necessary for the provision of the goods, services,
 facilities, privileges, advantages, or accommodations being
 offered;

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3 (ii) a failure to make reasonable modifications in
 4 policies, practices, or procedures, when such modifications are
 5 necessary to afford such goods, services, facilities, privileges,
 6 advantages or accommodations to individuals with disabilities,
 unless the entity can demonstrate that making such modifications
 would fundamentally alter the nature of such goods, services,
 facilities, privileges, advantages, or accommodations;

7 (iii) a failure to take such steps as may be necessary to
 8 ensure that no individual with a disability is excluded, denied
 9 services, segregated or otherwise treated differently than other
 10 individuals because of the absence of auxiliary aids and services,
 11 unless the entity can demonstrate that taking such steps would
 fundamentally alter the nature of the good, service, facility,
 privilege, advantage, or accommodation being offered or would
 result in an undue burden;

12 (iv) a failure to remove architectural barriers, and
 13 communication barriers that are structural in nature, in existing
 facilities . . . where such removal is readily achievable; and

14 (v) where an entity can demonstrate that the removal
 15 of a barrier under clause (iv) is not readily achievable, a failure to
 16 make such goods, services, facilities, privileges, advantages or
 accommodations available through alternative methods if such
 methods are readily achievable.

17 The acts of defendants set forth herein were a violation of plaintiffs' rights under the ADA,
 18 Public Law 101-336, and the regulations promulgated thereunder, 28 CFR Part 36, *et seq.*
 19 Effective January 31, 1993, the standards of the ADA were also incorporated into California
 20 Civil Code §51, making available the damage remedies incorporated into Civil Code §51 and
 21 52(a) and 54.3.

22 53. Per 42 U.S.C. 12188 (a)(1), "Nothing in this section shall require a person with
 23 a disability to engage in a futile gesture if such person has actual notice that a person or
 24 organization covered by this title does not intend to comply with its provisions". Pursuant to
 25 this last section, plaintiff JULIAN ARCHULETA has not returned to defendants' premises
 26 since on or about March 30, 2004, but on information and belief, alleges that defendants have
 27 continued to violate the law and deny the rights of plaintiffs and of other persons with physical
 28 disabilities to access this public accommodation. Pursuant to 42 USC §12188(a)(2), "In
 cases of violations of §302(b)(2)(A)(iv) . . . injunctive relief shall include an order to alter

1 facilities to make such facilities readily accessible to and usable by individuals with disabilities
2 to the extent required by this title”.

3 54. Plaintiffs seek relief pursuant to remedies set forth in §204(a) of the Civil
4 Rights Act of 1964 (42 U.S.C. 2000(a)-3(a)), and pursuant to federal regulations adopted to
5 implement the Americans with Disabilities Act of 1990, including but not limited to an order
6 granting injunctive relief and attorneys’ fees. Plaintiffs will seek attorneys’ fees conditioned
7 upon being deemed to be the prevailing party.

8 55. Plaintiffs seek damages pursuant to California Civil Code §§51, 51.5 and 52(a),
9 54, 54.1 and 54.3, which provide, within the statutory scheme, that a violation of the ADA is a
10 violation of California’s Unruh Civil Rights Act.

11 Wherefore, plaintiffs pray for relief and damages as hereinafter stated.

12 **II. SECOND CAUSE OF ACTION FOR DENIAL OF FULL AND EQUAL ACCESS**
13 **IN VIOLATION OF CALIFORNIA CIVIL CODE §§54, 54.1 AND 54.3, ET SEQ.**
14 (On Behalf of Plaintiffs JULIAN ARCHULETA and DISABILITY RIGHTS
15 ENFORCEMENT, EDUCATION, SERVICES: HELPING YOU HELP OTHERS, a
16 California public benefit corporation, and Against Defendants DOLORES L.
PERRAPATO, an individual dba JACK’S CLUB; and IRMA ENCINAS, an individual
dba JACK’S CLUB, inclusive)
(California Civil Code §§54, 54.1, 54.3, *et seq.*)

17 56. Plaintiffs replead and incorporate by reference as if fully set forth again herein,
18 the allegations contained in paragraphs 1 through 55 of this complaint.

19 57. At all times relevant to this action, California Civil Code §54 has provided that
20 persons with physical disabilities are not to be discriminated against because of physical
21 handicap or disability. This section provides that:

22 (a) Individuals with disabilities . . . have the same rights
23 as the general public to full and free use of the streets, highways,
24 sidewalks, walkways, public buildings, medical facilities,
including hospitals, clinics, and physicians’ offices, and other
public places.

25 58. California Civil Code §54.1 provides that persons with disabilities shall not be
26 denied full and equal access to places of public accommodation or facilities:

27 (a)(1) Individuals with disabilities shall be entitled to full
28 and equal access, as other members of the general public, to
accommodations, advantages, facilities, medical facilities,
including hospitals, clinics, and physicians’ offices, and

privileges of all common carriers, airplanes, motor vehicles, railroad trains, motorbuses, streetcars, boats, or any other public conveyances or modes of transportation (whether private, public, franchised, licensed, contracted, or otherwise provided), telephone facilities, adoption agencies, private schools, hotels, lodging places, places of public accommodation, amusement or resort, and other places to which the general public is invited, subject only to the conditions and limitations established by law, or state or federal regulation, and applicable alike to all persons.

Civil Code §54.1(a)(1)

59. California Civil Code §54.1 further provides that a violation of the Americans with Disabilities Act of 1990 constitutes a violation of section 54.1:

(d) A violation of the right of an individual under the Americans with Disabilities Act of 1990 (Public Law 101-336) also constitutes a violation of this section, and nothing in this section shall be construed to limit the access of any person in violation of that act.

Civil Code §54.1(d)

60. Plaintiff JULIAN ARCHULETA and the membership of plaintiff DREES are persons within the meaning of Civil Code §54.1 whose rights have been infringed upon and violated by the defendants, and each of them, as prescribed by §§54 and 54.1. A separate act in violation of §§54 and 54.1 has been committed EACH DAY that defendants act or fail to act and/or knowingly and willfully fail and refuse to remove or eliminate each policy and procedure barrier presently existing at the subject public accommodation which denies full and equal access for persons with physical disabilities to said building(s), elements and facilities of JACK'S CLUB. Plaintiffs have been denied full and equal access on an ongoing basis since the date of plaintiff JULIAN ARCHULETA's first visit. As a legal result, plaintiffs are entitled to seek damages pursuant to California Civil Code §54.3(a), which provides:

Any person or persons, firm or corporation, who denies or interferes with admittance to or enjoyment of the public facilities as specified in Sections 54 and 54.1 or otherwise interferes with the rights of an individual with a disability under Sections 54, 54.1 and 54.2 is liable for each offense for the actual damages and any amount as may be determined by a jury, or the court sitting without a jury, up to a maximum of three times the amount of actual damages but in no case less than . . . one thousand dollars (\$1,000) and . . . attorney's fees as may be determined by the court in addition thereto, suffered by any person denied any of the rights provided in Sections 54, 54.1 and 54.2.

Civil Code §54.3(a)

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61. The public facilities above described constitute “public facilities and public accommodations” within the meaning of Health & Safety Code §19955 and were facilities to which members of the public are invited. The aforementioned acts and omissions of defendants, and each of them, constitute a denial of equal access to use and enjoyment of these facilities by persons with disabilities including plaintiffs.

62. On or about December 21, 2003, March 30, 2004 and each day thereafter, plaintiff JULIAN ARCHULETA suffered violations of §§54 and 54.1 of the Civil Code in that plaintiff JULIAN ARCHULETA was denied access to JACK’S CLUB and other public facilities as stated herein at JACK’S CLUB and on the basis that plaintiff JULIAN ARCHULETA was a person with physical disabilities.

63. As a result of the denial of equal access to defendants’ facilities due to the acts and omissions of defendants, and each of them, in owning, operating and maintaining these subject public facilities, plaintiffs suffered violations of plaintiffs’ civil rights, including but not limited to rights under §§54, 54.1 and 54.3, Civil Code, and plaintiff JULIAN ARCHULETA suffered physical discomfort, bodily injury, emotional distress, mental distress, mental suffering, mental anguish, which includes shame, humiliation, embarrassment, frustration, anger, chagrin, disappointment and worry, all of which are expectedly and naturally associated with a denial of access to a person with physical disabilities, all to plaintiff’s damages as hereinafter stated. Defendants’ actions and omissions to act constituted discrimination against plaintiff on the sole basis that plaintiffs are persons or an entity that represents persons with physical disabilities and unable, because of the policies, procedures and practices that act as barriers created and maintained by the defendants in violation of the subject laws, to use the public facilities hereinabove described on a full and equal basis as other persons.

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2 64. Plaintiffs have been damaged by defendants', and each of their, wrongful
3 conduct and seeks the relief that is afforded by Civil Code §§54 and 54.1, 54.3 and 55 for
4 violation of plaintiffs' rights as persons or an entity that represents persons with physical
5 disabilities on or about December 21, 2003, March 30, 2004, and on a continuing basis since
6 then, including statutory damages, a trebling of all of actual damages, general and special
7 damages available pursuant to §54.3 of the Civil Code according to proof.

8 65. As a result of defendants', and each of their, acts and omissions in this regard,
9 plaintiffs have been required to incur legal expenses and hire attorneys in order to enforce
10 plaintiffs' rights and enforce the provisions of the law protecting access for persons with
11 physical disabilities and prohibiting discrimination against persons with physical disabilities.
12 Pursuant to the provisions of §54.3 of the Civil Code, plaintiffs therefore will seek recovery in
13 this lawsuit for all reasonable attorneys' fees and costs incurred if deemed the prevailing party.
14 Additionally, plaintiffs' lawsuit is intended not only to obtain compensation for damages to
15 plaintiffs, but also to compel the defendants to make their facilities accessible to all members
16 of the public with disabilities, justifying public interest attorneys' fees, if deemed the
17 prevailing party, pursuant to the provisions of §1021.5 of the Code of Civil Procedure.

18 Wherefore, plaintiffs pray for relief and damages as hereinafter stated.

19 **III. THIRD CAUSE OF ACTION FOR DENIAL OF ACCESS TO FULL AND**
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(On Behalf of Plaintiffs JULIAN ARCHULETA and DISABILITY RIGHTS ENFORCEMENT, EDUCATION, SERVICES: HELPING YOU HELP OTHERS, a California public benefit corporation, and Against Defendants DOLORES L. PERRAPATO, an individual dba JACK'S CLUB; and IRMA ENCINAS, an individual dba JACK'S CLUB, inclusive)
(Civil Code §51, 51.5)

66. Plaintiffs replead and incorporate by reference, as if fully set forth again herein, the allegations contained in paragraphs 1 through 65 of this complaint.

67. Defendants' actions and omissions and failure to act as a reasonable and prudent public accommodation in identifying, removing and/or creating architectural barriers, policies, practices and/or procedures violates §51 of the Civil Code, the Unruh Civil Rights Act. The Unruh Act provides:

This section shall be known, and may be cited, as the Unruh Civil Rights Act.

All persons within the jurisdiction of this state are free and equal, and no matter what their sex, race, color, religion, ancestry, national origin, or **disability** are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever.

This section shall not be construed to confer any right or privilege on a person that is conditioned or limited by law or that is applicable alike to persons of every sex, color, race, religion, ancestry, national origin, or **disability**.

Nothing in this section shall be construed to require any construction, alteration, repair, structural or otherwise, or modification of any sort whatsoever, beyond that construction, alteration, repair, or modification that is otherwise required by other provisions of law, to any new or existing establishment,

1 facility, building, improvement, or any other structure . . . nor
 2 shall anything in this section be construed to augment, restrict, or
 3 alter in any way the authority of the State Architect to require
 construction, alteration, repair, or modifications that the State
 Architect otherwise possesses pursuant to other . . . laws.

4 A violation of the right of any individual under the
 5 Americans with Disabilities Act of 1990 (Public Law 101-336)
 shall also constitute a violation of this section.

6 As the Unruh Act incorporates violations of the Americans with Disabilities Act of 1990, the
 7 “intent” of the defendants in not complying with barrier removal is not an issue. Hence, the
 8 failure on the parts of defendants, as reasonable and prudent public accommodations, in acting
 9 or failing to act to remove or eliminate policy, practice and procedure barriers can be construed
 10 as a “negligent per se” act of defendants, and each of them.

11 68. The acts and omissions of defendants stated herein are discriminatory in nature
 12 and in violation of Civil Code §51.5:

13 No business establishment of any kind whatsoever shall
 14 discriminate against, boycott or blacklist, refuse to buy from, sell
 15 to, or trade with any person in this state because of the race,
 16 creed, religion, color, national origin, sex, or **disability** of the
 person or of the person’s partners, members, stockholders,
 directors, officers, managers, superintendents, agents, employees,
 business associates, suppliers, or customers.

17 As used in this section, “person” includes any person, firm
 18 association, organization, partnership, business trust, corporation,
 limited liability company, or company.

19 Nothing in this section shall be construed to require any
 20 construction, alteration, repair, structural or otherwise, or
 21 modification of any sort whatsoever, beyond that construction,
 22 alteration, repair or modification that is otherwise required by
 23 other provisions of law, to any new or existing establishment,
 24 facility, building, improvement, or any other structure . . . nor
 shall anything in this section be construed to augment, restrict or
 alter in any way the authority of the State Architect to require
 construction, alteration, repair, or modifications that the State
 Architect otherwise possesses pursuant to other laws.

25 69. Defendants’ acts and omissions as specified have denied to plaintiffs full and
 26 equal accommodations, advantages, facilities, privileges and services in a business
 27 establishment, on the basis of physical disability, in violation of Civil Code §§51 and 51.5,
 28 the Unruh Civil Rights Act. Furthermore, pursuant to the 1992 amendment to California Civil
 Code §51, “A violation of the right of any individual under the Americans with Disabilities

Act of 1990 (Public Law 101-336) shall also constitute a violation of this section". Plaintiffs accordingly incorporate the entirety of their above cause of action for violation of the Americans with Disabilities Act at ¶¶46, *et seq.*, as if repled herein.

70. As a legal result of the violation of plaintiff JULIAN ARCHULETA's civil rights as hereinabove described, plaintiff JULIAN ARCHULETA has suffered general damages, bodily injury, physical injury, emotional distress (all to plaintiff's damage according to proof, and incurred reasonable attorneys' fees and costs). Plaintiffs JULIAN ARCHULETA and DREES are entitled to the rights and remedies of §52(a) of the Civil Code, including trebling of actual damages (defined by §52(h) of the Civil Code to mean "special and general damages"), as well as to reasonable attorneys' fees and costs, as is allowed by statute, according to proof if deemed to be the prevailing party.

Wherefore, plaintiffs pray that this court grant relief and damages as hereinafter stated.

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IV. FOURTH CAUSE OF ACTION FOR UNFAIR BUSINESS PRACTICES IN VIOLATION OF CALIFORNIA BUSINESS AND PROFESSIONS CODE §17200, *ET SEQ.*

(On Behalf of Plaintiffs JULIAN ARCHULETA and DISABILITY RIGHTS ENFORCEMENT, EDUCATION, SERVICES: HELPING YOU HELP OTHERS, a California public benefit corporation, and Against Defendants DOLORES L. PERRAPATO, an individual dba JACK'S CLUB; and IRMA ENCINAS, an individual dba JACK'S CLUB, inclusive)
(Business & Professions Code §17200, *et seq.*)

71. Plaintiffs replead and incorporate by reference, as if fully set forth again herein, the allegations contained in paragraphs 1 through 70 of this complaint.

72. Defendants, and each of them, have had actual and constructive notice of the Americans with Disabilities Act of 1990 and have seen places of public accommodation similar to the public accommodations subject to this action with the International Sign of Accessibility for persons with disabilities. Said signage indicates to all people, those disabled

1 and those who are not disabled, that the place of public accommodation is accessible to all
 2 persons with disabilities to participate in the opportunities, goods and services of the public
 3 accommodation.

4 73. Defendants DOLORES L. PERRAPATO, an individual dba JACK'S CLUB;
 5 and IRMA ENCINAS, an individual dba JACK'S CLUB, and each of them, and their agents,
 6 ostensible agents, masters, servants, employers, employees, representatives,
 7 franchisors, franchisees, joint venturers, alter egos, partners and/or associates,
 8 although having actual and constructive knowledge of the Americans with
 9 Disabilities Act of 1990 and accessible policies that public accommodations
 10 should have but have engaged in an unlawful and unfair business act or
 11 practice of the California Business and Professions Code

12 17200. As used in this chapter, unfair competition shall mean
 13 and include any unlawful, unfair or fraudulent business act or
 14 practice and unfair, deceptive, untrue or misleading advertising
 15 and any act prohibited by Chapter 1 (commencing with
 16 Section 17500) of Part 3 of Division 7 of the Business and
 17 Professions Code

18 (Calif. Bus. & Prof. Code §17200)

19 in that defendants, and each of them, have intentionally and/or negligently failed to change
 20 their admittance policies, practices and procedures at the subject JACK'S CLUB, thereby
 21 denying plaintiffs and those similarly situated from the opportunity to enjoy the goods and
 22 services provided therein.

23 74. Plaintiffs JULIAN ARCHULETA and DREES have the right to act as private
 24 attorneys general to remedy such acts, as provided in sections 17204 and 17205 of the
 25 California Business and Professions Code, to wit:

26 17204. Actions for any relief pursuant to this chapter shall be
 27 prosecuted exclusively in a court of competent jurisdiction by the
 28 Attorney General or any district attorney or by any county
 counsel authorized by agreement with the district attorney in
 actions involving violation of a county ordinance, or any city
 attorney of a city, or city and county, having a population in
 excess of 750,000, and, with the consent of the district attorney,
 by a city prosecutor in any city having a full-time city prosecutor
 or, with the consent of the district attorney, by a city attorney in
 any city and county in the name of the people of the State of
 California upon their own complaint or upon the complaint of

any board, officer, person, corporation or association or by any person acting for the interests of itself, its members or the general public.

17205. Unless otherwise expressly provided, the remedies or penalties provided by this chapter are cumulative to each other and to the remedies or penalties available under all other laws of this state.

(Calif. Bus. & Prof. Code §§17204 and 17205)

Wherefore, plaintiffs pray that this court grant relief and damages as follows:

PRAYER:

Plaintiffs pray that this court award damages and provide relief as follows:

I. PRAYER FOR FIRST CAUSE OF ACTION FOR DENIAL OF ACCESS BY A PUBLIC ACCOMMODATION IN VIOLATION OF THE AMERICANS WITH DISABILITIES ACT OF 1990 (42 U.S.C. §1 2101, *et seq.*)
(On Behalf of Plaintiffs JULIAN ARCHULETA and DISABILITY RIGHTS ENFORCEMENT, EDUCATION, SERVICES:HELPING YOU HELP OTHERS, a California public benefit corporation, and Against Defendants DOLORES L. PERRAPATO, an individual dba JACK'S CLUB; and IRMA ENCINAS, an individual dba JACK'S CLUB, inclusive)
(42 U.S.C. §12101, *et seq.*)

1. For injunctive relief, compelling defendants DOLORES L. PERRAPATO, an individual dba JACK'S CLUB; and IRMA ENCINAS, an individual dba JACK'S CLUB, inclusive, to make JACK'S CLUB, located at 2545 24th Street, San Francisco, California, readily accessible to and usable by individuals with disabilities, per Public Law 101-336, §308; and to make reasonable modifications in policies, practice, eligibility criteria and procedures so as to afford full access to the goods, services, facilities, privileges, advantages and accommodations being offered.

2. For attorneys' fees, litigation expenses and costs of suit, if plaintiffs are deemed the prevailing party; and

3. For such other and further relief as the court may deem proper.

II. PRAYER FOR SECOND CAUSE OF ACTION FOR DENIAL OF FULL AND EQUAL ACCESS IN VIOLATION OF CALIFORNIA CIVIL CODE §§54, 54.1 AND 54.3, *ET SEQ.*

(On Behalf of Plaintiffs JULIAN ARCHULETA and DISABILITY RIGHTS ENFORCEMENT, EDUCATION, SERVICES:HELPING YOU HELP OTHERS, a California public benefit corporation, and Against Defendants DOLORES L. PERRAPATO, an individual dba JACK'S CLUB; and IRMA ENCINAS, an individual dba JACK'S CLUB, inclusive)

(California Civil Code §§54, 54.1, 54.3, *et seq.*)

1. For injunctive relief, compelling defendants DOLORES L. PERRAPATO, an individual dba JACK'S CLUB; and IRMA ENCINAS, an individual dba JACK'S CLUB, inclusive, to make JACK'S CLUB, located at 2545 24th Street, San Francisco, California, readily accessible to and usable by individuals with disabilities, per state law.

2. Statutory damages as afforded by Civil Code §54.3 for the date of incident and for each day, from the inception of the filing of this complaint, on which defendants have failed to change their admittance policies, practices and procedures which denied plaintiffs and other persons with disabilities full and equal access.

3. Attorneys' fees pursuant to Civil Code §54.3 and §55 and Code of Civil Procedure §1021.5, if plaintiffs are deemed the prevailing party;

4. Punitive damages pursuant to Civil Code §3294;

5. For all costs of suit;

6. Prejudgment interest pursuant to Civil Code §3291;

7. Such other and further relief as the court may deem just and proper.

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III. PRAYER FOR THIRD CAUSE OF ACTION FOR DENIAL OF FULL AND EQUAL ACCESS IN VIOLATION OF CALIFORNIA CIVIL CODE §§54, 54.1 and 54.3, *ET SEQ.*

(On Behalf of Plaintiffs JULIAN ARCHULETA and Against Defendants DOLORES L. PERRAPATO, an individual dba JACK'S CLUB; and IRMA ENCINAS, an individual dba JACK'S CLUB, inclusive)
(California Civil Code §§51, 51.5, *et seq.*)

1. General and compensatory damages according to proof.

IV. PRAYER FOR FOURTH CAUSE OF ACTION FOR DENIAL OF ACCESS TO FULL AND EQUAL ACCOMMODATIONS, ADVANTAGES, FACILITIES, PRIVILEGES AND/OR SERVICES IN VIOLATION OF CALIFORNIA CIVIL CODE §51, *ET SEQ.* (THE UNRUH CIVIL RIGHTS ACT)

(On Behalf of Plaintiffs JULIAN ARCHULETA and DISABILITY RIGHTS ENFORCEMENT, EDUCATION, SERVICES:HELPING YOU HELP OTHERS, a

California public benefit corporation and Against Defendants DOLORES L. PERRAPATO, an individual dba JACK'S CLUB; and IRMA ENCINAS, an individual dba JACK'S CLUB, inclusive)
(California Civil Code §§51, 51.5, *et seq.*)

1. All statutory damages as afforded by Civil Code §52(a) for the date of incident and for each day on which defendants have denied to plaintiffs full and equal accommodations, advantages, facilities, privileges or services in any business establishment or have otherwise denied to plaintiffs and persons with physical disabilities equal access;

2. Attorneys' fees pursuant to Civil Code §52(a), if plaintiffs are deemed the prevailing party;

3. Punitive damages pursuant to Civil Code §3294;

4. For all costs of suit;

5. Prejudgment interest pursuant to Civil Code §3291; and

6. Such other and further relief as the court may deem just and proper.

V. PRAYER FOR FIFTH CAUSE OF ACTION FOR DENIAL OF ACCESS TO FULL AND EQUAL ACCOMMODATIONS, ADVANTAGES, FACILITIES, PRIVILEGES AND/OR SERVICES IN VIOLATION OF CALIFORNIA CIVIL CODE §51, *ET SEQ.* (THE UNRUH CIVIL RIGHTS ACT)
(On Behalf of Plaintiff JULIAN ARCHULETA, and Against Defendants DOLORES L. PERRAPATO, an individual dba JACK'S CLUB; and IRMA ENCINAS, an individual dba JACK'S CLUB, inclusive)
(California Civil Code §§51, 51.5, *et seq.*)

1. General and compensatory damages to plaintiff JULIAN ARCHULETA according to proof.

VI. PRAYER FOR SIXTH CAUSE OF ACTION FOR UNFAIR BUSINESS PRACTICES IN VIOLATION OF CALIFORNIA BUSINESS AND PROFESSIONS CODE §17200, *ET SEQ.*
(On Behalf of Plaintiffs JULIAN ARCHULETA and DISABILITY RIGHTS ENFORCEMENT, EDUCATION, SERVICES: HELPING YOU HELP OTHERS, a California public benefit corporation, and Against Defendants DOLORES L. PERRAPATO, an individual dba JACK'S CLUB; and IRMA ENCINAS, an individual dba JACK'S CLUB, inclusive)
(Business & Professions Code §17200, *et seq.*)

1. For injunctive relief, compelling defendants DOLORES L. PERRAPATO, an individual dba JACK'S CLUB; and IRMA ENCINAS, an individual dba JACK'S CLUB, inclusive, to make JACK'S CLUB, located at 2545 24th Street, San Francisco,

1 California, readily accessible to and usable by individuals with disabilities,
2 per state law.

3 2. Attorneys' fees pursuant to applicable code if plaintiffs are deemed the
4 prevailing party.

5 Dated: December 15, 2004

6 THOMAS E. FRANKOVICH
A PROFESSIONAL LAW CORPORATION

7
8 By: _____/s/
9 THOMAS E. FRANKOVICH
10 Attorneys for Plaintiffs JULIAN ARCHULETA and
11 DISABILITY RIGHTS ENFORCEMENT,
EDUCATION, SERVICES:HELPING YOU HELP
OTHERS, a California public benefit corporation

12 **DEMAND FOR JURY TRIAL**

13 Plaintiffs hereby demand a jury for all claims for which a jury is permitted.

14 Dated: December 15, 2004

15 THOMAS E. FRANKOVICH
A PROFESSIONAL LAW CORPORATION

16
17 By: _____/s/
18 THOMAS E. FRANKOVICH
19 Attorneys for Plaintiffs JULIAN ARCHULETA and
20 DISABILITY RIGHTS ENFORCEMENT,
21 EDUCATION, SERVICES:HELPING YOU HELP
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